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Markup in Senate Committee: Considering Amendments

Updated September 11, 2007

Congressional Research Service

<https://crsreports.congress.gov>

98-245

Senate rules pertaining to amending measures on the floor apply generally to a Senate committee markup as well. Within the confines of Senate rules, some committees have adopted their own rules governing the consideration of amendments during a markup.

However, Senate committee markups can proceed informally, in accordance with a committee's particular needs and practices that have evolved over time. Senate and committee rules and committee practices governing the consideration of amendments during committee markup are summarized below. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.¹

The committee chair usually chooses the text that serves as the base text of the markup (see CRS Report 98-244, *Markup in Senate Committee: Choosing a Text*). The rules of some committees require that the base text be distributed to committee members in advance of the markup. Senators may draft amendments to this text prior to markup, and often seek the advice of the Office of Legislative Counsel to ensure that amendments are clear and properly drafted.

Several committees have rules requiring first-degree amendments to be filed in advance of the markup to assist Senators in planning and to expedite committee action.² For example, the Banking Committee requires 50 copies of a first-degree amendment to be submitted to the committee two business days before markup. Committee staff may distribute all submitted amendments to committee members at the outset of the markup, or as the amendments are offered.

Following any opening statements a committee may allow, a measure is open to amendment at any point and amendments are considered in whatever order Senators offer them. However, a committee may decide by unanimous consent to structure the amendment process. Senators may draft amendments during markup, and Senate rules require that amendments be in writing on demand of any Senator (Rule XV, paragraph 1). Although an amendment must be read when offered, in practice the sponsor asks unanimous consent to waive the reading (Rule XV, paragraph 1).

The sponsor of an amendment typically is recognized to debate it, and some committees specify that the sponsor provide information about the amendment to assist with its evaluation. For instance, the Banking Committee requires Senators offering amendments to show, by appropriate typographical device, the effect of proposed amendments on existing law, although this requirement can be waived by the chair. Other Senators may debate an amendment when recognized by the chair, and the chair ordinarily recognizes the first Senator seeking recognition.

There is no general time limit on debating amendments in committee, either for an individual Senator, a particular amendment, or all amendments. The chair puts an amendment to a vote when no Senators seek recognition to debate it. A committee may end debate earlier by agreeing to a motion to lay an amendment on the table, but tabling kills the amendment. On most committees it is possible for opponents to filibuster an amendment, because the Senate's procedure for invoking cloture to end protracted floor debate does not apply to committees. However, some committees have adopted rules to bring extended debate to an end. For example, the Judiciary Committee has provided for debate to be closed through the adoption, by a majority of the committee (including at least one minority party Senator), of a non-debatable motion to end debate.

¹ This report was written by Thomas P. Carr, formerly an Analyst at the Congressional Research Service. The listed author is available to respond to inquiries from congressional clients on the subject.

² CRS Report RL33972, *Senate Committee Rules in the 110th Congress: A Comparison of Key Provisions*, by Betsy Palmer identifies these committees.

A committee may set its own quorum for voting on amendments, so long as the quorum is not less than one-third of the committee (Rule XXVI, paragraph 7(a)(1)). Senators may vote by voice, division, or rollcall vote, and a Senator may move to reconsider the vote on any amendment (as detailed in Senate Rule XIII). Absent Senators may vote on amendments by proxy, unless a committee adopts a rule to the contrary (Rule XXVI, paragraphs 7(a)(3) and 7(c)(1)). A Senator voting by proxy must be informed of the matter to be decided and must request to vote by proxy. Some committees give Senators further flexibility, for instance, by allowing oral proxies as well as written ones, or by allowing Senators to vote by proxy (or in person) after the vote has occurred.

A Senator who thinks that an amendment violates any rule can make a point of order any time prior to the amendment's disposition. The Senator must cite the basis of the point of order, and, while Senators do not have a right to debate points of order, the chair often allows the arguments on both sides to be presented. If the point of order is sustained against any portion of the amendment, in general the whole amendment falls. If a Senator appeals the ruling of the chair, the committee will vote on whether to sustain the ruling.

Senate rules governing the consideration of amendments on the floor apply generally to the consideration of amendments in committee as well (see CRS Report 98-853, *The Amending Process in the Senate*). Committees may set aside these rules implicitly or explicitly by unanimous consent. Under the rules: (1) amendments are permitted in two degrees—a first-degree amendment that seeks to amend the base text and a second-degree amendment that proposes to amend the first-degree amendment; (2) amendments need not be germane to the text they propose to amend, but Senate rules prohibit the floor consideration of substantive committee amendments containing significant matter outside the jurisdiction of the reporting committee (Rule XV, paragraph 5); (3) an amendment can only change text in one part of a measure; (4) as a matter of right, any Senator may demand that an amendment be divided if it consists of two or more propositions, and each could stand separately; (5) Senators may re-amend text only if their amendments take a “bigger bite,” by also changing unamended text; and (6) a Senator who offers an amendment generally may modify or withdraw it unilaterally before action on it has been taken.

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